IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2095 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

JAYESHKUMAR KANAIYALAL LUHANA (BHOJWANI SINDHI)

Versus

DISTRICT MAGISTRATE

Appearance:

MR SATISH R PATEL for Petitioner

MR SJ DAVE, AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 19/06/2000

ORAL JUDGEMENT

The petitioner has been detained under the provisions of Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as `the Act of 1985') by the order dated 3-2-2000 passed by the

District Magistrate, Panchmahals, Godhra and he has been declared as bootlegger.

2. It is now well settled that unless the activities of a person as bootlegger has disturbed the maintenance of public order, he cannot be detained under the Act. Reliance is placed on a decision of the case of Piyush Kantilal Mehta Vs. Commissioner of Police, Ahmedabad & Ors. reported in AIR 1989 SC 491.

3. I have heard learned advocate for the petitioner and also perused the material on record. According to learned advocate for the petitioner, the detenu has submitted a representation to the Home Minister, State of Gujarat on 6-3-2000 and it appears that same has not been considered by the authority till 6-3-2000 and no explanation has been putforward by the authority to that effect. Even no affidavit has been filed by the State authority. It has been held in a judgment delivered by this Court in the case of Ashokbhai Jivraj @ Jivabhai Solanki Vs. Police Commissioner, Surat and Ors. reported in 2000(1) G.L.H. 393 as under:

> "Before parting with the matter, we may observe that recently, we have come across few cases wherein no counter-affidavits are filed by the respondents. It is settled law that whenever an order of detentiion is challenged by a detenu or by his "next friend", it is the duty of the authorities to justify the action by filing counter-affidavit preferably by the detaining authority himself, unless there are circumstances which may justify filing of affidavit by an officer or authority other than the detaining authority".

Since no affidavit has been filed either by the detaining authority or by the State authority and also since no explanation has been putforth by the said authority for not deciding the representation of the detenu till 6-3-2000, the order of detention is illegal and the same cannot be sustained. Learned advocate for the petitioner does not press any other points.

4. The petition is allowed. The impugned order of detention dated 3-2-2000 passed by the District Magistrate, Panchmahals, Godhra against the detenu is hereby quashed. The detenu-Jayeshkumar Kanaiyalal is set at liberty forthwith, if not required in any other case. Rule is made absolute with no order as to costs.

(R.P.DHOLAKIA,J.)

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